# STATE OF ILLINOIS HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
TAMIKIA SCOTT,	)		
	)		
Complainant,	)		
	)	Charge No.:	1999CN2628
and	)	EEOC No.:	N/A
	)	ALS No.:	11177
DR. JAMES COVINGTON, D.D.S.,	)		
	)		
	)		
Respondent.	)		

# RECOMMENDED ORDER AND DECISION

On February 7, 2000, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Tamikia Scott. That complaint alleged that Respondent, Dr. James Covington, D.D.S., sexually harassed Complainant. The complaint further alleged that Respondent retaliated against Complainant by discharging her when she objected to sexual harassment.

This matter now comes on to be heard on Complainant's Motion for Voluntary Dismissal and Award of Sanctions. Oral argument was heard on the motion on July 18, 2002. The matter is ready for decision.

### FINDINGS OF FACT

The following facts were derived from the record file in this matter and from the oral argument on Complainant's instant motion.

- 1. Complainant desires to dismiss her claim against Respondent.
- 2. The parties have not entered into any agreement to settle this matter.
- 3. Respondent's attorney, Howard Towles, repeatedly engaged in conduct which unreasonably delayed the proceedings in this matter. That conduct included failure to comply with discovery in a timely manner, failure to attend status hearings and hearings on motions, failure to be on time for many of the hearings he did attend, and filing of frivolous motions.
- 4. On December 4, 2000, Complainant filed a motion for sanctions against Respondent. The sanctions were sought because of Respondent's repeated and lengthy delays in complying with discovery requests. Complainant submitted an affidavit which stated that she had incurred \$1,929.00 in attorney's fees in unsuccessful attempts to obtain discovery from Respondent.
- 5. In an order issued on December 11, 2000, Respondent was given until January 8, 2001 to file any objections to Complainant's December 4 motion for sanctions. Respondent filed a response to the motion, and argued the merits of awarding sanctions. The response did not dispute the reasonableness of the time and hourly rates requested in the motion.
- 6. On January 19, 2001, Respondent was given until March 9, 2001 to file specific written objections to the time and hourly rates sought by Complainant in the December 4 motion for

sanctions. No such written objections were ever filed.

- 7. The time and hourly rates sought by Complainant in the December 4 motion are reasonable and should be accepted.
- 8. On January 24, 2001, Complainant filed her Motion to Strike and For Additional Sanctions. That motion sought an additional \$601.25 as compensation for attorney's fees incurred in responding to a frivolous motion to compel filed by Respondent.
- 9. On April 12, 2001, the parties jointly moved to have all pending motions (including Complainant's motion for sanctions) heard on May 3, 2001.
- 10. On May 3, 2001, Respondent's counsel failed to appear when the motions were called. The order entered that day stated that Complainant should receive \$601.25 in sanctions, which should be paid by Respondent's counsel.
- 11. On August 29, 2001, Complainant filed Complainant's Second Motion for Entry of Pre-Hearing Memorandum and for Sanctions. That motion was denied.

## CONCLUSIONS OF LAW

- 1. Complainant's Motion for Voluntary Dismissal and Award of Sanctions should be granted.
- 2. The actions of Respondent's attorney were willful and contumacious and had the effect of unreasonably delaying these proceedings. They also unfairly caused Complainant to incur otherwise unnecessary attorney's fees.

3. The sanctions awarded to Complainant should be assessed against Respondent's attorney, not against Respondent.

### DISCUSSION

Complainant's motion has two elements. First, she seeks to dismiss her claim against Respondent. Next, she seeks to enforce sanctions against Respondent's attorney.

The first part of the motion is easily resolved. The parties have not reached any agreement to settle this case. Nonetheless, Complainant no longer wants to pursue the matter. She asks that the complaint and underlying charge be dismissed. Complainant is represented by counsel and her motion does not appear to be the result of any external pressure. It appears that the motion is knowingly and voluntarily made. Accordingly, her motion to dismiss should be granted.

The second part of the motion requires some explanation. During the pendency of this matter, there were instances in which Complainant sought sanctions against Respondent and his attorney. On two occasions, it was ruled that such sanctions were appropriate. Although she wishes to dismiss her claim against Respondent, Complainant wants to be awarded the amount of those earlier sanctions.

Under section 5300.750 of the Commission's procedural rules, an administrative law judge may impose sanctions "as justice may require" if a party or attorney engages in conduct which unreasonably delays the proceedings. There is no evidence that

Respondent himself engaged in any sanctionable conduct. However, his attorney, Howard Towles, repeatedly engaged in conduct, which unreasonably delayed the proceedings in this matter. That conduct included failure to comply with discovery in a timely manner, failure to attend status hearings and hearings on motions, failure to be on time for many of the hearings he did attend, and filing of frivolous motions. That conduct was sanctionable.

On December 4, 2000, Complainant filed a motion for sanctions against Respondent. The sanctions were sought because of Respondent's repeated and lengthy delays in complying with discovery requests. Complainant submitted an affidavit which stated that she had incurred \$1,929.00 in attorney's fees in unsuccessful attempts to obtain discovery from Respondent.

In an order issued on December 11, 2000, Respondent was given until January 8, 2001 to file any objections to Complainant's December 4 motion. Respondent filed a response to the motion, but that response only argued the merits of awarding sanctions. The response did not dispute the reasonableness of the time and hourly rates requested in the motion.

On January 19, 2001, Mr. Towles was told that he would be personally sanctioned. The order entered that day gave him until March 9, 2001 to file specific written objections to the time and hourly rates sought by Complainant in the December 4 motion for sanctions. No such written objections were ever filed, so it

will be assumed that there is no dispute as to the rates or the time sought. Even if a response had been filed, it might not have been successful. The time and hourly rates sought by Complainant in the December 4 motion are reasonable and should be accepted. Using those figures, the appropriate sanction is \$1,929.00.

On January 24, 2001, Complainant filed her Motion to Strike and For Additional Sanctions. That motion sought an additional \$601.25 as compensation for attorney's fees incurred in responding to a frivolous motion to compel filed by Respondent. On April 12, 2001, the parties jointly moved to have all pending motions (including Complainant's motion for sanctions) heard on May 3, 2001.

On May 3, 2001, Respondent's counsel failed to appear when the motions were called. The order entered that day stated that Complainant should receive \$601.25 in sanctions, which should be paid by Respondent's counsel.

On August 29, 2001, Complainant filed Complainant's Second Motion for Entry of Pre-Hearing Memorandum and for Sanctions. Because the parties were able to file a joint prehearing memorandum at a reasonable time, the August 29 motion was denied.

Thus, it was determined on two different occasions that Respondent's attorney had engaged in sanctionable conduct. Such sanctions are rarely imposed in this forum, but in this instance, they were necessary to persuade counsel to comply with the orders

of the administrative law judge. If Mr. Towles is allowed to avoid payment of those sanctions, the threat of such sanctions will have little meaning. As a result, the Commission should order Mr. Towles to pay the attorney's fees Complainant incurred as a result of his misconduct.

# RECOMMENDATION

Based upon the foregoing, Complainant has knowingly and voluntarily chosen to dismiss her claim against Respondent. Therefore, the complaint in this matter and the underlying charge of discrimination should be dismissed with prejudice.

However, Respondent's counsel repeatedly engaged in misconduct which unnecessarily delayed the proceedings in this matter. On two separate occasions, the presiding administrative law judge determined that he should be sanctioned for that misconduct. Accordingly, it is recommended that Respondent's attorney, Howard Towles, be ordered to pay to Complainant the sum of \$2,530.25 as attorney's fees incurred as a result of his misconduct.

### HUMAN RIGHTS COMMISSION

BY:

MICHAEL J. EVANS

ADMINISTRATIVE LAW JUDGE

ADMINISTRATIVE LAW SECTION

ENTERED: December 3, 2002